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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	Case No. CR-18-577 CRB
	)	
Plaintiff,	)	UNITED STATES' MOTION TO ADMIT
	)	SETTLEMENT AGREEMENTS WITH REENA
v.	)	PRASAD, BRENT HOGENSON, AND PERCY
	)	TEJEDA
MICHAEL RICHARD LYNCH AND	)	
STEPHEN KEITH CHAMBERLAIN,	)	Trial Date: March 18, 2024
	)	Judge: Hon. Charles Breyer
Defendant.	)	
	)	
	)	

1  
2 The government moves to admit the settlement agreements Autonomy entered into with Reena  
3 Prasad, Brent Hogenson, and Percy Tejada. These settlement agreements are highly probative of  
4 Defendants' scheme to defraud and are admissible under Federal Rule of Evidence 408. And the  
5 Defendants have opened the door to the agreements' admission—including by arguing in opening and  
6 eliciting on cross-examination evidence implying that Autonomy properly terminated Brent Hogenson  
7 for cause. The Court admitted this evidence in *Hussain* and should do so again here. 16-CR-462, ECF  
8 No. 419 at 74.

9 **I. FACTUAL BACKGROUND**

10 Count 1 of the Superseding Indictment alleges a variety of means and methods that the  
11 Defendants used to execute their scheme to defraud, one of which was “intimidating, pressuring, and  
12 paying-off persons who raised complaints about or openly criticized Autonomy’s financial practices and  
13 performance.” ECF No. 21 (Superseding Indictment), ¶ 22(i). Reena Prasad, Percy Tejada, and Brent  
14 Hogenson were each terminated by Autonomy for pretextual reasons after they raised concerns about  
15 Autonomy’s financial practices. After they were terminated, Autonomy entered into settlement  
16 agreements with each of them in which Autonomy agreed to pay them in exchange for their silence.

17 Reena Prasad was terminated on July 30, 2010, after she had repeatedly escalated concerns  
18 around resellers not paying Autonomy because they lacked valid end users or had not closed deals with  
19 end users (factors that, under a legitimate transaction, should not have impacted whether or not the  
20 resellers paid Autonomy). *See* Green Declaration in Support of United States’ Motion to Admit  
21 Settlement Agreements (“Green Decl.”), Ex. 1614 (Prasad Settlement Agreement). Ms. Prasad has  
22 testified that, when she escalated those concerns to Mr. Chamberlain, she was told to go “hands off” and  
23 cease trying to collect payments from resellers central to this case, including MicroTech, MicroLink,  
24 and Capax. If permitted, Ms. Prasad is expected to testify that on the day she was terminated she was  
25 not provided with any reason for her termination other than that her employment was at-will. Ms.  
26 Prasad’s termination came shortly after she was interviewed for what she understood to be an  
27 investigation into a payroll issue at Autonomy. (Ms. Prasad did not have any role with respect to  
28 payroll.) On March 16, 2011, Autonomy and Ms. Prasad entered into a settlement agreement in which

1 Autonomy agreed to pay \$75,000 to release Autonomy from all claims related to her employment. Ms.  
2 Prasad, for her part, agreed not to discuss the settlement with others aside from a few exceptions. Green  
3 Decl. Ex. 1614. Ms. Prasad's settlement agreement documented the pretextual reasons that Autonomy  
4 used to justify her termination, stating that Autonomy alleged she violated company policies related to,  
5 "among other things, the authorization of payments to third parties and internal company  
6 investigations." Green Decl. Ex. 1614 at 1. As established during her testimony today, Ms. Prasad was  
7 responsible for *collecting payments* from third parties—she was not responsible for *authorizing*  
8 *payments to third parties*. Ms. Prasad's settlement agreement also required that, if she received a  
9 subpoena or document demand requesting any of the "Settlement Information, including any related  
10 documents or correspondence between the parties or any testimony related to such documents or  
11 correspondence, Prasad shall immediately notify Autonomy of the receipt of such subpoena or  
12 deposition notice or document demand, and shall cooperate in any effort by Autonomy to object to or  
13 quash such subpoena, or object to or obtain a motion for a protective order related to such deposition  
14 notice or document demand." Green Decl. Ex. 1614, at 5. The settlement agreement further provided  
15 that: "Prasad understands that time is of the essence in responding to such a subpoena or deposition  
16 notice or document demand, and any delay in notifying Autonomy of the receipt of such a document  
17 shall be severely prejudicial to Autonomy, and therefore shall be deemed a material breach of this  
18 agreement." *Id.*

19 Like Ms. Prasad, Mr. Tejeda was terminated on July 30, 2010. He also worked in the finance  
20 department at Autonomy as the Director of Revenue. Autonomy entered into a settlement agreement  
21 with Mr. Tejeda on March 20, 2011. Mr. Tejeda's agreement noted that he, like Ms. Prasad, had alleged  
22 that he was terminated in violation of whistleblower protection laws. Green Decl. Ex. 1623. Mr.  
23 Tejeda's settlement agreement was similarly structured to Ms. Prasad's and he was paid \$105,000 by  
24 Autonomy. *Id.*

25 Ms. Prasad and Mr. Tejeda's settlement agreements with Autonomy should not be viewed in a  
26 vacuum. They must be viewed in the context of Mr. Brent Hogenson and the events surrounding his  
27 termination. Ms. Prasad reported up to Mr. Hogenson. As evident from documents already admitted  
28 and expected to be admitted, Mr. Hogenson was aware of Ms. Prasad's concerns and he incorporated the

1 issues she was finding into a set of concerns that he escalated to Dr. Lynch in June 2010. *See, e.g.,*  
 2 Green Decl. Ex. 13037, 10094. Mr. Hogenson elevated his concerns to Deloitte (Autonomy’s auditor)  
 3 on June 26, 2010. Green Decl. Ex. 3789, at 28–34. As described below, he also elevated his concerns  
 4 about Autonomy’s potentially misleading financial statements to regulatory authorities.

5 On July 26, 2010, Mr. Hogenson sent a letter to the Financial Services Authority (“FSA”) in the  
 6 United Kingdom and wrote that he was motivated to inform them of his concerns because he wanted to  
 7 “ensure that the Autonomy financial statements provided to investors are materially correct and are not  
 8 misleading current or potential investors.” Green Decl. Ex. 1012, at 1. Two days later, on July 28,  
 9 2010, Autonomy terminated Mr. Hogenson. Green Decl. Ex. 13059 (Hogenson Settlement Agreement).

10 On July 30, 2010, Autonomy sent a letter in response to the FSA. *See* Green Decl. Ex. 1542, ¶ 4.  
 11 On August 20, 2010, Mr. Hogenson notified the Securities and Exchange Commission (“SEC”) in the  
 12 United States of his concerns, forwarding the SEC the letter that he had sent to the FSA on July 26,  
 13 2010. Green Decl. Ex. 6256.

14 In addition, Mr. Vaidyanathan testified today that he believed Mr. Hogenson had also indicated  
 15 that he intended to elevate his concerns to the Serious Fraud Office (“SFO”) in the U.K. In November  
 16 2010, Autonomy entered into a settlement agreement with Mr. Hogenson in which, in exchange for his  
 17 silence, Autonomy agreed to pay him \$750,000. Green Decl. Ex. 13059, at 1. Similar to Ms. Prasad,  
 18 Mr. Hogenson’s settlement agreement also provided that each party must cooperate in any effort by the  
 19 other party to “object to or quash” any subpoena for documents or testimony related to information  
 20 concerning his employment at Autonomy. Green Decl. Ex. 13059, at 5. On February 2, 2011, the  
 21 Financial Reporting Review Panel (“FRRP”), a “body authorized under the Companies Act 2006 to  
 22 review and investigate the annual accounts and directors’ reports of public and large private companies”  
 23 sent a letter to Autonomy requesting additional information related to financial concerns raised by Mr.  
 24 Hogenson. Green Decl. Ex. 1542. All of these events took place *before Autonomy entered into its*  
 25 *settlement agreements with Ms. Prasad and Mr. Tejeda* in March 2011.

## 26 **II. ARGUMENT**

27 Federal Rule of Evidence 408 provides that evidence of “furnishing . . . a valuable consideration  
 28 in compromising or attempting to compromise the claim” and “conduct or a statement made during

1 compromise negotiations about the claim” are not admissible “either to prove or disprove the validity or  
2 amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction.” Fed. R.  
3 Evid. 408(1). Rule 408 allows, however, a court to “admit this evidence for another purpose, such as  
4 proving a witness’s bias or prejudice, negating a contention of undue delay, or proving **an effort to**  
5 **obstruct a criminal investigation or prosecution.**” Fed. R. Evid. 408(b) (emphasis added). Rule 408  
6 is inclusive not exclusive—it provides a list of examples, not intended to be exhaustive, for which  
7 evidence of settlement agreements may be admitted. The settlement agreements at issue here fall  
8 squarely within this exception. The government would be admitting the settlement agreements not for  
9 the purpose of proving or disproving the validity of the witnesses’ termination claims but to establish a  
10 concerted effort by Autonomy to obstruct any criminal investigations into its false and misleading  
11 financial statements—the primary concern that motivated Mr. Hogenson to send his letter to the FSA.  
12 By the time Autonomy entered into the settlement agreements with Mr. Hogenson, Ms. Prasad, and Mr.  
13 Tejeda, it was well-aware of the potentially criminal nature of the concerns that Mr. Hogenson was  
14 surfacing. The settlement agreements therefore reflect Autonomy’s attempts to “buy off” witnesses to a  
15 crime. *See* Fed. R. Evid. 408, adv. comm. note (“An effort to ‘buy off’ the prosecution or a prosecuting  
16 witness in a criminal case is not within the policy of the rule of exclusion.”).

17 The facts clearly establish the intent behind these agreements: Mr. Hogenson, Mr. Tejeda, and  
18 Ms. Prasad all worked in the same department. They were fired within days of each other for pretextual  
19 reasons after becoming aware of and raising financial concerns to Mr. Chamberlain and Dr. Lynch.  
20 Indeed, Joel Scott’s testimony in *Hussain* established that Ms. Prasad was fired for raising her head  
21 above the “parapet.” Trial Tr. 2644:1–3 (I recall [Mr. Hussain’s] words with respect to –with respect to  
22 Reema [sic] that she had raised her head above the parapet and that he wanted her gone.”).

23 The government did mention the terminations of Mr. Hogenson, Mr. Tejeda, and Ms. Prasad in  
24 its 404(b) notice, but this was in the context of noticing Dr. Lynch’s treatment of the analyst Daud Kahn,  
25 who Dr. Lynch also punished for raising questions about Autonomy’s financial reporting. Green Decl.  
26 Ex. A. The government provided this notice out of an abundance of caution. It has always been the  
27 government’s position that the terminations and ensuing settlement agreements with the finance  
28 employees constituted part of the scheme to defraud as explicitly alleged in the Superseding Indictment.

1 ECF No. 311 at 8–9.

2 In a pretrial filing regarding this topic, filed in advance of the pretrial conference in February  
3 2024, the government wrote that it did not intend to offer evidence of the settlement agreements, but  
4 reserved the right to do so depending on the cross examination of the witnesses. ECF No. 311 at 9 n.1.  
5 The Defendants’ opening statements this week have opened the door to this evidence and given this  
6 issue heightened importance. During Dr. Lynch’s opening statement, Mr. Weingarten stated:

7 Hogenson, the whistleblower. **You heard a story that a CFO in the United**  
8 **States came forward, made allegations about the accounting, and Mike**  
9 **fired him because he didn't want those allegations to get out in the open**  
10 **and blow the lid off Autonomy.** That's the implication of what you heard  
11 this morning.

12 **We say bunk.** This guy Hogenson was presiding over the largest accounting  
13 fraud in the history of Autonomy. People under him for about a year were  
14 stealing. He never caught it. An investigation started, and then, lo and behold,  
15 Hogenson files a whistleblower complaint. In the course of the original  
16 investigation, allegations surface about Hogenson himself. And he's going --  
17 he's on the witness list, and I'm looking forward to this. **We're going to settle**  
18 **this one in court. Who is right here?**

19 They say Mike fired him. And Mike didn't fire him, Joel Scott fired him  
20 because the whistleblowing. **We're saying he was fired because of his own**  
21 **conduct. His own conduct over and over and over again made him**  
22 **completely unqualified to be the CFO of a public company.** And you're  
23 going -- it's all going to be before you, and you can use this as a litmus test.  
24 Who is pushing the envelope too far? Is the Government? Did they properly  
25 say Mike Lynch misbehaved?

26 Tr. 367:23-368:20 (emphasis added).

27 Mr. Chamberlain’s opening statement also discussed Mr. Hogenson’s elevation of  
28 concerns to Deloitte and attributed much weight to the fact that Deloitte reviewed and

1 closed out these concerns. Mr. Chamberlain’s counsel suggested that this course of events  
 2 was indicative of Mr. Chamberlain’s state of mind that there actual wrongdoing behind Mr.  
 3 Hogenson’s allegations. Trial Tr. 433:22–435:1 (“This is a whistleblower dealing with  
 4 accounting issues that we, Deloitte, have signed off on . . . . Now, take a step back and say  
 5 what is the importance of this with regard to Mr. Chamberlain and his statement of mind? .  
 6 . . . And after that challenge, the auditors say all of this accounting is good. That, again,  
 7 provides comfort to Mr. Chamberlain that he’s performing his job in good faith.”). What  
 8 defense counsel did not say is that Mr. Hogenson was terminated and paid \$750,000 shortly  
 9 after raising his concerns with Deloitte—surely another factor that arguably went to his  
 10 state of mind concerning potential wrongdoing.

11 Joel Scott’s testimony in *Hussain* established that Dr. Lynch was the driving force  
 12 behind the terminations. This testimony was cited extensively in the government’s pretrial  
 13 brief on this subject. To the extent Defendants argue that these terminations were outside  
 14 Dr. Lynch’s control, the government refers the Court to its prior brief. ECF No. 311, at 6–  
 15 9 (citing Trial Tr. 2641–43).

### 16 **III. CONCLUSION**

17 For the foregoing reasons, the government respectfully requests that the Court admit the  
 18 evidence pertaining to Ms. Prasad, Mr. Hogenson, and Mr. Tejeda’s terminations.

20 DATED: March 19, 2024

Respectfully submitted,

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 24 U.S.C. § 515.

25 /s/ Kristina Green  
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